

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

DHARMENDRA @ DHARMO

KESHAVLAL VYAS

Versus

COMMISSIONER OF POLICE FOR CITY OF RAJKOT & ORS

Appearance:

MR ANIL S DAVE for Petitioner

MR.RM CHAUHAN,AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 23/06/98

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India, the detenu Dharmendra @ Dharmo Keshavlal Vyas , who is detained pursuant to the order of detention dated 16-12-97 passed by the Commissioner of Police, Rajkot under section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the Act") has challenged the same .

In the grounds of detention supplied to the detenu, the detaining authority has relied upon three criminal cases filed against the detenu out of which two are pending in the Court for trial whereas one is under investigation. The detaining authority has also relied upon the statements of three witnesses recorded in relation to the incidents dated 12-12-97 and 13-12-97 wherein it is alleged that the petitioner is indulging into beating innocent people; unnecessarily entering into quarrel with people and beating them by throwing stones, bottles and with knife and causing injuries; using dangerous weapons and giving threats of killing persons. It is thus alleged that the petitioner is a person indulging into anti-social activities which affect adversely or are likely to affect adversely the maintenance of public order.

Since this petition is required to be allowed only on the short ground that since the subjective satisfaction arrived at by the detaining authority that the activities of the detenu are prejudicial to the maintenance of public order is not genuine, inasmuch as the allegations levelled against the detenu and the criminal cases filed against him, if taken on their face value are accepted as true, the same can at best be said to be cases of breach of law and order situation, the order of detention passed against the detenu is clearly illegal, it is not necessary to deal with the other contentions urged in this petition.

This point is now concluded by the decision of the Supreme Court in *M.J.Shaikh vs M.M.Mehta*, 1995 (2) GLR 1268 wherein it is held the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. It, therefore, necessarily follows, that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Act, there should be positive material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or Chapter XVII of I.P.C. or under Chapter V of the Arms Act and that a single or isolated act falling under Chapter XVI or Chapter XVII of I.P.C. or Chapter V of Arms Act cannot be characterised as a habitual act referred to in Section 2(c) of the Act. In

view of this it is clear that on the basis of the criminal cases registered against the detenu , he cannot be branded as a "dangerous person" within the meaning of clause (c) of section 2 of the Act, who can be said to have been engaged in activities which affect adversely or are likely to affect adversely the maintenance of public order.

In the result, this petition is allowed. The order of detention dated 16-12-97 is quashed and set aside. The detenu Dharmendra @ Dharmo Keshavlal Vyas is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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